

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

**J.B.D.L. Corp. d/b/a
BECKETT APOTHECARY, et al.**
Plaintiffs,

v.

WYETH

Defendant.

NO. C-1-01-704

**Judge Sandra S. Beckwith
Magistrate Judge Timothy S. Hogan**

**CVS MERIDIAN, INC. and
RITE AID CORPORATION,**
Plaintiffs,

v.

WYETH

Defendant.

No. C-1-03-781

Judge Sandra S. Beckwith

**PLAINTIFFS MEMORANDUM OF LAW IN SUPPORT OF MOTION
FOR LEAVE TO WITHDRAW MOTION AMENDING CASE MANAGEMENT ORDER**

Plaintiffs CVS Meridian, Inc. ("CVS") and Rite Aid Corporation ("Rite Aid") have moved this Court for permission to withdraw their Motion to Amend Case Management Order which was filed on February 9, 2004. (Doc. No. 89) In light of the response contained in the partial opposition to the motion filed by Defendant Wyeth, CVS and Rite Aid no longer oppose their inclusion in a consolidated trial of this action.

PROCEDURAL HISTORY

CVS and Rite Aid commenced their action with the filing of a Complaint on November 10, 2003 and the action was initially assigned to the Honorable Susan J. Dott. On December 1, 2003 Plaintiffs filed a motion for reassignment, consolidation, and coordination seeking reassignment of the case to Judge Sandra Beckwith to whom a number of related cases had already been assigned. On December 30, 2003, Judge Dott issued an Order reassigning the action to Judge Beckwith and directing consolidation with the related actions pending before Judge Beckwith.

On February 9, 2004, CVS and Rite Aid filed a Motion to Amend Case Management Order asking, inter alia, that the CVS and Rite Aid action be coordinated with the related actions for pretrial purposes only and that their claims not be consolidated with the claims of the Class Plaintiffs for all purposes, including a consolidated trial. CVS and Rite Aid now seek to withdraw that Motion to Amend the Case Management Order.

ARGUMENT

In their Motion to Amend Case Management Order which CVS and Rite Aid now seek to withdraw, Plaintiffs sought not to be included in a consolidated trial with the Direct Purchaser action, out of concern that they would be prevented from asserting their own interests and would be prevented from making independent filings on matters of independent significance. However, these concerns have been alleviated by the response of Defendant Wyeth in its Memorandum in Partial Opposition to Motion of CVS Meridian Inc. and Rite Aid Corporation to Amend Case Management Order and Plaintiffs therefore no longer oppose a consolidated trial.

In its response, Wyeth stated that in a consolidated trial, CVS and Rite Aid will be entitled to present their own evidence and obtain individualized jury verdicts, and that CVS and Rite Aid “will not be precluded from asserting their own interests in a consolidated trial.” (Wyeth Mem. P. 6) In addition, Wyeth stated that it does not object to CVS and Rite Aid making independent filings on matters of independent significance. Plaintiffs’ prior concerns have also been alleviated by the fact that the Direct Purchaser Class filed no objection to either CVS and Rite Aid’s Motion to Amend Case Management Order or to Wyeth’s response to that motion. Thus, CVS and Rite Aid are no longer opposed to their inclusion in the consolidated trial contemplated by the Amended Case Management Order of January 9, 2002, and seek to withdraw their motion to amend that Order.

CONCLUSION

For the foregoing reasons, Plaintiffs CVS Meridian, Inc. and Rite Aid Corporation respectfully request that their Motion to Amend Case Management Order filed on February 9, 2004 be deemed withdrawn.

Respectfully submitted,

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Dated: April 13, 2005

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document has been electronically served on all parties with CM/ECF Registration on this 13th day of April, 2005 and by regular U.S. mail, postage prepaid upon the following:

Eliot Long BUCHANON INGERSOLL 1835 Market Street, 14 th Floor Philadelphia, PA 19103-2985 Facsimile: 215 665-8760	
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s/ Gordon A. Einhorn
Gordon A. Einhorn